



DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS

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BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,  
SURVEYORS, AND LANDSCAPE ARCHITECTS  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Architect's	)	ENG 2000-6-L
License of	)	ENG 2002-12-L
	)	
LOUIS W. ALVES,	)	BOARD'S FINAL
	)	ORDER
Respondent.	)	
	)	

BOARD'S FINAL ORDER

On or about July 13, 2004 and July 15, 2004, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order, and Errata, respectively, in the above-captioned matter to the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects ("Board") and to the parties. The copy of the recommended decision and errata sent to Respondent Louis W. Alves' ("Respondent") last known address was returned by the post office as "Box Closed-No Order." No exceptions were filed by either party.

Upon review of the entire record of these proceedings, the Board adopts the Hearings Officer's recommended decision as the Board's Final Order. Accordingly, the Board finds and concludes that Respondent violated HRS §§436B-19(6), (13), (15) and (16), together with HRS §464-10.


For the violations found, the Board orders that Respondent's architect's license shall be revoked and Respondent shall immediately submit all indicia of licensure as an architect in the State of Hawaii to the Executive Officer of the Board. The Board further orders that Respondent pay a fine in the sum of \$10,000.00 and restitution to Robert A. Vieson in the sum of \$142,184.02, and that Respondent pay said fine and restitution within sixty (60) days of the Board's Final Order; and that in any event, full payment of the fine and restitution be made a condition for relicensure.

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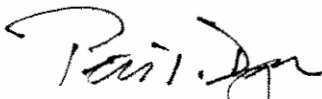
DATED: Honolulu, Hawaii: \_\_\_\_\_



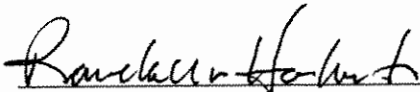
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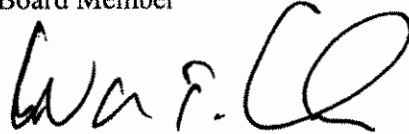
RICHARD SUZUKI  
Board Member

MARC VENTURA  
Board Member

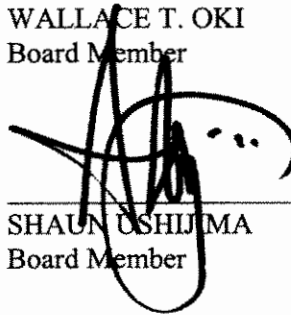
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DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2004 JUL 15 P 1:51

HEARINGS OFFICE

BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,  
SURVEYORS, AND LANDSCAPE ARCHITECTS  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Architect's License of	)	ENG 2000-6-L
	)	ENG 2002-12-L
LOUIS W. ALVES,	)	
	)	
Respondent.	)	ERRATA
_____	)	

ERRATA

Paragraph 2, page 11, of the undersigned Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order dated July 13, 2004 should read as follows:

For the violations found, the Hearings Officer recommends that Respondent's architect's license **be revoked** and Respondent be ordered to immediately submit all indicia of licensure as an architect in the State of Hawaii to the Executive Officer of the Board. The Hearings Officer further recommends that Respondent be ordered to pay a fine in the sum of \$10,000.00 and restitution to Robert A. Vieson in the sum of \$142,184.02,<sup>1</sup> and that Respondent pay said fine and restitution within sixty (60) days of the Board's Final Order; and that in any event, full payment of the fine and restitution be made a condition for relicensure.

DATED: Honolulu, Hawaii, JUL 15 2004

CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

<sup>1</sup> According to Vieson, he was able to recover \$7,815.98 out of the \$150,000.00 deposited in the joint checking account. Of the remaining \$142,184.02, a portion was apparently used to cover a number of unauthorized checks written by Respondent and the balance was unaccounted for.



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2004 JUL 13 P 12:53

HEARINGS OFFICE

BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,  
SURVEYORS, AND LANDSCAPE ARCHITECTS  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Architect's	)	ENG 2000-6-L
License of	)	ENG 2002-12-L
	)	
LOUIS W. ALVES,	)	HEARINGS OFFICER'S
	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW,
	)	AND RECOMMENDED
	)	ORDER
	)	

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On February 4, 2003, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), by and through its attorney, filed a petition for disciplinary action against the architect's license of Louis W. Alves ("Respondent"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

After unsuccessful efforts to locate the present whereabouts of Respondent, Petitioner was granted leave to serve the notice of hearing on Respondent by publication. On September 26, 2003, an order was issued authorizing service of the petition on Respondent by publication.

On December 2, 2003, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer. Petitioner was represented by its attorney, John T. Hassler, Esq. Respondent failed to appear either in person or through a representative. Nevertheless, Petitioner moved to continue the hearing to May 11, 2004 in

order to file another motion for leave to serve Respondent by publication. Petitioner's motion was granted and the hearing was reset for May 11, 2004.

On December 29, 2003, Petitioner filed another motion for leave to serve Respondent by publication. An order granting said motion was issued on the same date.

On May 11, 2004, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 464. Petitioner was represented by its attorney, John T. Hassler, Esq. Respondent failed to appear either in person or through a representative.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

## II. FINDINGS OF FACT

1. Respondent was originally licensed as an architect, License No. AR 8854, on or about March 27, 1996 by the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects ("Board"). Respondent's license expired on April 30, 2002 for failure to renew.

### COUNT I:

2. Respondent obtained a California architect's license, No. C-10855, on or about April 21, 1980.

3. On or about April 13, 1998, the Executive Officer of the Board of Architectural Examiners of the State of California ("California Board") filed an Accusation ("Accusation") against Respondent's license in The Matter of the Accusation Against Louis Wayne Alves, No. 98-02-9407142 ("California action").

4. The allegations in the Accusation included the following:

a. Respondent was certified (with an Asbestos Hazard Emergency Response Act ["AHERA"] certificate) as an Asbestos Consultant by Cal /OSHA;

b. In December 1988, Respondent contracted with Pierce Joint Unified School District ("PJUSD") to perform an AHERA inspection of their facilities and to develop an asbestos management plan to enable the school district to manage the asbestos in the schools and to meet federal guidelines for asbestos abatement;

- c. On December 12, 1988, Respondent submitted a report entitled "AHERA Compliance Management Plan for Arbuckle Elementary School";
- d. On February 18, 1992, Respondent submitted a report entitled "AHERA 3-year reinspection report for Pierce High School";
- e. Respondent failed to adequately supervise or review the work of his employees prior to signing documents prepared by them in the production of the asbestos management plans;
- f. On or about April 2, 1993, Respondent further contracted with PJUSD to provide schematic design documents, design development documents, construction documents including drawings and specifications, as well as to administer the bidding and construction for a portable classroom at Arbuckle Elementary School. Said work was required to be done prior to the start of the next school year in the fall;
- g. On August 27, 1998, Respondent's contract as described above was terminated for failure to timely submit the plans for the portable classroom, among other things;
- h. On August 28, 1993, Respondent was served with an "Administrative Complaint For Violation of the Toxic Substance Control Act" by the U.S. Environmental Protection Agency (EPA);
- i. The EPA complaint alleged that Respondent had violated the Toxic Substances Control Act by failing to properly identify homogeneous areas of suspected Asbestos Containing Building Materials in his asbestos management plan for Pierce High School;
- j. Respondent never responded to the EPA complaint or subsequent notices and subsequently left the state of California to avoid the action; and
- k. On December 23, 1993, the EPA filed a default order fining Respondent \$56,000.00 for the violations set forth in the complaint.

5. On or about October 21, 1998, the California Board issued a default decision against Respondent's California architect's license in the disciplinary action.

6. In its decision, the California Board found that Respondent had been duly served with the Accusation by regular mail.

7. The California Board further found as follows:

a. Based upon Respondent's failure to adequately supervise the work of his employees prior to signing the "AHERA Compliance Management Plan for Arbuckle Elementary School," and the "AHERA 3-year reinspection report for Pierce High School," and the resulting EPA complaint, Respondent violated California Code section 5584 for negligence in the supervision of his employees in the production of the asbestos management plans for PJUSD, and in the signing of documents related to the asbestos management of the sites which he did not personally review.

b. Based upon Respondent's failure to adequately supervise the work of his employees prior to signing the "AHERA Compliance Management Plan for Arbuckle Elementary School," and the "AHERA 3-year reinspection report for Pierce High School," and the resulting EPA complaint, Respondent violated California Code section 5585 for recklessness in the supervision of his employees in the production of the asbestos management plans for PJUSD, and in the signing of documents related to the asbestos management of the sites which he did not personally review.

c. Respondent contracted with PJUSD to provide schematic design documents, design development documents, construction documents including drawings and specifications, as well as to administer the bidding and construction for a portable classroom at Arbuckle Elementary School. Said work was required to be done prior to the start of the next school year in the fall. Respondent failed to timely submit such plans and that such failure constituted a violation of California Code section 5584 for negligence or misconduct in failing to complete the work on the portable classroom project in a timely manner.

d. The conduct described in the EPA complaint and the fact that the EPA obtained a default against Respondent

constituted a violation of California Code §5584 for willful misconduct.



8. California Code §§5584 and 5585 provide as follows:

§ 5584. Negligence or willful misconduct in practice

The fact that, in the practice of architecture, the holder of a license has been guilty of negligence or willful misconduct constitutes a ground for disciplinary action.

§ 5585. Incompetency or recklessness in practice

The fact that in the practice of architecture the holder of a license has been guilty of incompetency or recklessness constitutes a ground for disciplinary action.

9. At no time following the issuance of the California Board's default decision did Respondent inform the Board of the California default decision.

COUNT II:

10. On or about June 15, 1999, Respondent entered into an American Institute of Architects ("AIA") Abbreviated Standard Form of Agreement Between Owner and Architect (form B151 1997) ("agreement") with Robert A. Vieson.

11. Vieson learned of Respondent through the real estate broker who represented Vieson in the purchase of property in the State of Hawaii.

12. Under the terms of the agreement, Respondent would prepare drawings for the construction of a private residence on Lot 8 of the Ke Alii Subdivision 11A, situated at 380 Kului Way, Hanaka'o'o, Kaanapali Golf Estates Subdivision ("Property").

13. Vieson agreed to pay Respondent for Respondent's architectural services.

14. At the time he entered into the contract and at all relevant times thereafter, Vieson was a resident of Cincinnati, Ohio.

15. After Vieson and Respondent contracted for Respondent to provide the architectural drawings, Respondent informed Vieson that Respondent may be able to bid on the construction of the house as well.

16. In approximately June of 2000, Vieson opened a checking account at the Lahaina branch of First Hawaiian Bank ("joint account"). Vieson deposited \$50,000.00 into the joint account on July 17, 2000 and made later deposits for total deposits of approximately \$150,000.00 into the joint account. Vieson opened the account in anticipation of obtaining bids for the construction of the house.

17. Vieson assumed that Respondent was attempting to obtain bids from qualified contractors to construct the house.

18. The joint account was in the names of Respondent and Vieson. The address listed for the account holders was 550 Front Street, #220-B, Lahaina, Hawaii 96761. At the time the contract was entered into and the joint account was opened at First Hawaiian Bank, that address was Respondent's business address.

19. Vieson anticipated that if and when construction began, he would contact the bank to approve payments being made from the joint account. Unbeknownst to Vieson, the joint account did not require the approval of both account holders for withdrawals or the writing of checks.

20. Respondent subsequently learned that the account did not need both his and Vieson's signatures. However, Respondent did not inform Vieson of this fact.

21. Vieson gave Respondent approval to contract for the Property to be cleared of debris as required by the condominium association; however, at no time did Vieson give written or verbal approval to Respondent to begin construction of the residence on the Property.

22. On or about August 1, 2000, Visions of Hawaii, a Construction Corporation ("Visions") filed articles of incorporation with the State of Hawaii Department of Commerce and Consumer Affairs ("DCCA").

23. In the records kept by the DCCA, Respondent was listed as the agent for Visions. According to the records, the mailing address for Visions was listed as 550 Front Street, #220-B, Lahaina, Hawaii 96761, which was also the address for the joint account opened by Respondent and Vieson and also the residence address for Respondent.

24. The articles of incorporation filed with the DCCA for Visions identify Don Sanders as the president, treasurer and director and Carl Simcox as the vice-president, secretary and director.

25. Simcox was first licensed as a general contractor by the Contractors License Board, License No. CT 22569, on June 21, 2000. Simcox's license expired on September 30, 2002.

26. On or about January 5, 2001, Visions was licensed as a general contractor, License No. CT 22900, by the Contractors License Board. Visions' contractor's license expired on September 30, 2002.

27. On August 23, 2000, Simcox applied with the Maui Department of Public Works and Waste Management for a building permit to construct a residence on the Property.

28. Respondent sent the application form to Vieson and asked Vieson to sign and return the form to Respondent. Vieson signed the application and returned the form. On the application form, Simcox is listed as the contractor.

29. In approximately July of 2000, Visions began construction on the Property. Sanders supervised the construction while Simcox did not participate in the construction.

30. Beginning on July 28, 2000, Respondent began writing checks on the joint account for products and services relating to the construction of the residence on the Property.

31. Respondent wrote checks from the joint account to Sanders totaling \$7,000.00 and to Visions totaling \$45,000.00. Respondent also wrote checks to himself from the joint account. Respondent's explanation for these payments was that he was acting as "construction manager" of the project.

32. Vieson never authorized Respondent to serve as construction manager and did not know that Respondent was so acting until after construction stopped.

33. There was no written or verbal contract for Respondent to serve as construction manager. Respondent did not provide Vieson with any meaningful accounting of the funds in the joint account.

34. At the time construction stopped in approximately October 10, 2000, the work had not progressed past the footings/foundations stage.

35. Respondent wrote checks from the joint checking account to cover the cost of a computer and travel expenses, none of which were related to the construction project. Respondent also wrote checks to "Fifita Niu" totaling \$5,000.00 for masonry services even though no masonry structure was ever built on the Property.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating the following provisions of the HRS:

COUNT I:

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

\* \* \* \*

(13) Revocation suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section;

\* \* \* \*

(15) Failure to report in writing to the licensing authority any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days of the disciplinary decision;

\* \* \* \*

**§464-10 Licensees; suspension or revocation of licenses; fines; hearings.** In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to fraud or deceit in obtaining the license or gross negligence, incompetency, or misconduct in the practice of the profession, or violating this chapter or the rules of the board. Any person may prefer charges in writing with the executive secretary of the board against any person holding a license.

\* \* \* \*

COUNT II:

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

\* \* \* \*

(6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;

\* \* \* \*

(16) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required;

\* \* \* \*

**§464-10 Licensees; suspension or revocation of licenses; fines; hearings.** In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to fraud or deceit in obtaining the license or gross negligence, incompetency, or misconduct in the practice of the profession, or violating this chapter or the rules of the board. Any person may prefer charges in writing with the executive secretary of the board against any person holding a license.

\* \* \* \*

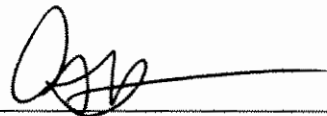
After a careful review of the evidence, the Hearings Officer concludes that Petitioner has proven by a preponderance of the evidence each of the foregoing violations against Respondent in Counts I and II.

#### IV. RECOMMENDED ORDER

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Board find and conclude that Respondent violated HRS §§436B-19(6), (13), (15) and (16), together with HRS §464-10.

For the violations found, the Hearings Officer recommends that Respondent's architect's license and Respondent be ordered to immediately submit all indicia of licensure as an architect in the State of Hawaii to the Executive Officer of the Board. The Hearings Officer further recommends that Respondent be ordered to pay a fine in the sum of \$10,000.00 and restitution to Robert A. Vieson in the sum of \$142,184.02,<sup>1</sup> and that Respondent pay said fine and restitution within sixty (60) days of the Board's Final Order; and that in any event, full payment of the fine and restitution be made a condition for relicensure.

DATED at Honolulu, Hawaii: JUL 13 2004



CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

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<sup>1</sup> According to Vieson, he was able to recover \$7,815.98 out of the \$150,000.00 deposited in the joint checking account. Of the remaining \$142,184.02, a portion was apparently used to cover a number of unauthorized checks written by Respondent and the balance was unaccounted for.